

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY VILLAREAL,
Plaintiff,
v.
HERNANDEZ, *et al.*,
Defendants.

Case No. 1:22-cv-01376-ADA-BAM (PC)
ORDER DIRECTING PLAINTIFF TO FILE
NOTICE CLARIFYING HIS INTENT
(ECF Nos. 12, 13)
TWENTY-ONE (21) DAY DEADLINE

Plaintiff Anthony Villareal (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 8, 2023, the Court screened Plaintiff’s first amended complaint and found that Plaintiff stated a cognizable claim against Defendants Hurtado and Coronado, correctional officers, for excessive force in violation of the Eighth Amendment, but failed to state any other cognizable claims for relief against any other defendants. (ECF No. 10.) The Court ordered Plaintiff to either file a second amended complaint or notify the Court of his willingness to proceed only on the cognizable claims. (*Id.* at 12.)

On February 27, Plaintiff filed a second amended complaint. (ECF No. 12.) However, on March 9, 2023, Plaintiff filed a notice of his willingness to proceed only on the cognizable claims identified by the Court’s February 8, 2023 order. (ECF No. 13.) Based on these conflicting filings, it is not clear how Plaintiff wishes to proceed with this action.

1 In light of Plaintiff's *pro se* status, the Court finds it appropriate to allow Plaintiff an
2 opportunity to clarify his intent. Specifically, Plaintiff should file a written response stating
3 whether he intended to file a second amended complaint in this action, or whether he wishes to
4 strike the second amended complaint and allow this case to proceed only on the cognizable
5 excessive force claims against Defendants Hurtado and Coronado.

6 Accordingly, within **twenty-one (21) days** from the date of service of this order, Plaintiff
7 shall file written notice of how he intends to proceed in this action. If Plaintiff fails to respond to
8 the Court's order, the Court will strike the second amended complaint and recommend that this
9 action proceed only on the claims found cognizable in the first amended complaint.

10 IT IS SO ORDERED.

11
12 Dated: March 9, 2023

13 /s/ Barbara A. McAuliffe
14 UNITED STATES MAGISTRATE JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28